

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

FILED

MAY 19 2008

U.S. DISTRICT COURT
MARTINSBURG, WV 25401

MERVIN SEALY,

Petitioner,

v.

CIVIL ACTION NO. 3:07-CV-109
(BAILEY)

WAYNE PHILLIPS, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATIONS

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on April 30, 2008 [Doc. 23]. In that filing, the magistrate judge recommended that this Court deny the petitioner's application under 28 U.S.C. § 2241.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were

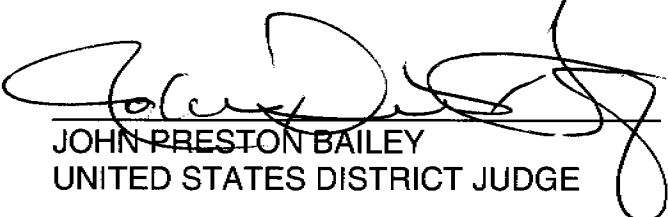
due within ten (10) days after being served with a copy of the R & R pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on May 5, 2008. See Doc. 24. Accordingly, this Court will review the R & R for clear error.

Having reviewed the record and the magistrate judge's R & R, it is the opinion of this Court that the recommendations of Magistrate Judge Seibert [**Doc. 23**] should be, and are, hereby **ORDERED ADOPTED** for reasons more fully stated in that report. As such, the Court hereby **GRANTS** the respondent's Motion to Dismiss [**Doc. 13**] and **DENIES** and **DISMISSES with prejudice** the petitioner's application under 28 U.S.C. § 2241 [**Doc. 1**]. Accordingly, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* petitioner.

DATED: May 19, 2008.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE